CF0000039320

CAVEATED.

Single Bench (Civil)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR.

Civil Case
Misc ~~Appeal~~ No. 1099 /2000.

MA 390/2004

(Arising Out of Order passed Under Section 34 of the Arbitration and Conciliation Act, 1996).

-

Appellants - 1. Union of India through General Manager C O R E, Allahabad.

2. Chief Project Manager, Railway Electrification, Bilaspur.

- Versus -

Respondents- 1. M/s Binay Industrial Power Project Pvt Limited, New Delhi.

2. Shri U.N. Majhi, ex F A & CA O, (RE) Ranchi, at present Divisional Railway Manager, Sonpur, Bihar.

-

APPEAL UNDER SECTION 37 OF THE ARBITRATION and conciliation Act, 1996.

-

8238
Filed on 1.11.04
by Shri Sanjay Yadav
Advocate
Rly A.R.

(57)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक MA : 390/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

09-02-2005

Shri P.S. Koshy learned counsel for the appellants.

Shri Gautam Khetrapal counsel for the respondents.

Heard.

The instant appeal has been preferred against the impugned order passed by the District Judge, Bilaspur on 27.7.2000 by which the petition under section 34 of the Arbitration and Conciliation Act,1996 for setting aside the award preferred by the appellants has been dismissed as barred by limitation.

Learned counsel for the appellants submits that the impugned order was passed in the absence of the petitioner or his counsel. However, learned District Judge has dismissed the petition solely on the ground that the award has been passed on 16.12.1998 and therefore it has been presumed that the same must have been received by the appellants on the same day and as the petition has been preferred on 1.4.99, i.e. beyond the period of three months as prescribed under section 34 of the Act. It has also been pointed out in the impugned award that the petition does not disclose the date of receipt of the award. It only mentions that the award was passed on 16.12.1998.

—2

GL PRJ—FS/350—12/2000—50,000.

(36)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.A. 390/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

From the perusal of the record it appears that the learned District Judge vide order dated 13.10.99 allowed the application of the petitioner to call the original record from the sole arbitrator, Shri U.N.Manjhi and the memo was directed to be issued to the Arbitrator to send the records to the Court. In compliance with the aforesaid order number of requisitions and reminders are shown to have been sent to the Arbitrator but till 6.4.2000 there was a direction to await the award as also the original record. However, on 27.7.2000 the petition was dismissed in the absence of the petitioner as barred by limitation.

Taking into consideration the facts and circumstances of the case and further considering the fact that the learned District Judge has himself called for the original records from the Arbitrator which alone would have demonstrated as to when the award was sent to the parties after signature and when the same was received. It was not proper to reach the conclusion that the award must have been received by the appellant on 16.12.1998 itself. Similarly, in the absence of the petitioner or his counsel, on 27.7.2000 point of limitation could not be decided on merits without affording an opportunity of hearing to the parties to address on that point.

Learned counsel for the respondents submits that it would be appropriate that if after allowing the appeal the parties are directed to

-3

Gr. PRJ—FS/350—12/2000—50,000.

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.A. 390/04 **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

appear before the District Judge on a fixed date who in turn shall decide the appeal within a specified period.

Taking into consideration the submissions made by counsel for the parties and also considering the material available on record I am of the opinion that the appeal deserves to be allowed and the impugned order of dismissal of the petition under section 34 of the Act is liable to be set aside and the matter be remanded back to the District Judge with a direction to decide the objection regarding the limitation after hearing counsel for the parties.

Ordered accordingly.

Appeal is thus allowed.

Sd/-
Dhirendra Mishra
Judge